



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 15, 1992

McAllen Independent School District
c/o Atlas & Hall
Attention: Mr. Stephen L. Crain
P. O. Drawer 3725
McAllen, Texas 78502

OR92-21

Dear Mr. Crain:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14342.

The McAllen Independent School District (the "school district"), which you represent, has received a request for a copy of all grades of students on all assignments and tests in a particular class for a six week grading period. In addition, the requestor seeks information relating to any complaints concerning a particular teacher, lesson plans, certain school board policies, and information relating to administrative complaint procedures. The requestor also seeks the names of students in the class pursuant to section 21.251 of the Texas Education Code.¹ You

¹You have submitted a copy of a daily register showing the names and other information about pupils whom the teacher is instructing. The school district does not claim that the daily registers are excepted from required public disclosure under the Open Records Act, as it appears to have concluded that they are expressly made public by section 21.251 of the Education Code, which provides in pertinent part:

(a) Each teacher in the public free schools of this state shall keep a daily register showing the names, ages, courses of study, and attendance records of all pupils which the teacher is instructing.

(b) The register shall be open to the inspection of parents, school officers, and all other persons who may be interested.

have submitted to us for review grade book information that reflects grades given over a six week period, not including the names of the fifteen students. Although the school district does not object to release of some of the requested information, you claim that the grade book information and information relating to complaints made against the teacher are excepted from required public disclosure by sections 3(a)(2) and 3(a)(14) of the Open Records Act.

You advise us that no information exists relating to complaints made against the teacher.² The Open Records Act applies only to information in existence. Open Records Decision No. 572 (1990). Accordingly, the school district need not respond to that part of the request which relates to information regarding complaints made against the teacher. Because the information does not exist, we need not address the applicability of section 3(a)(2).

You claim that the grade book information is excepted from required public disclosure by section 3(a)(14) of the Open Records Act. Section 14(e) incorporates the requirements of the Family Educational Rights and Privacy Act (FERPA) into the Open Records Act and provides:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the

(Footnote continued)

(b) The register shall be open to the inspection of parents, school officers, and all other persons who may be interested.

We cannot address the public availability of the daily register in the context of an Open Records Act ruling. We note, however, that the foregoing provision may permit the disclosure of information that is protected under the federal Family Educational Rights and Privacy Act. We suggest that the school district consider the prohibitions of federal law and seek the guidance of the Texas Educational Association or the United States Department of Education before releasing daily registers pursuant to section 21.251.

²The requestor seeks "copies of all written memoranda concerning complaints made about [the teacher's] grading assignments, whether made by students, parents, teachers, or administrators." You respond that "the personnel file of the particular teacher does not disclose complaints." Because the requestor has not limited his request to the teacher's personnel file, we assume that you have ascertained that there are no such records anywhere in the possession of the school district.

provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

V.T.C.S. art. 6252-17a, § 14(e). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A).

We have examined the document submitted to us and conclude that it is clearly an "education record" as contemplated by FERPA. We also conclude that the grades could easily be associated with particular students given the small number of students in the class, even though the requestor has not requested the grades be identified with particular students. We do not understand any of FERPA's exceptions to the definition of "education records" or to the confidentiality requirement for "directory information" to apply here. See 20 U.S.C. § 1232g(a)(4)(B), (a)(5); Open Records Decision No. 431 (1985) (copy enclosed). We note, however, that the requestor may be the parent of one of the students to whom the requested information relates. In that case, the requested information may be released to the extent that it relates to the requestor's child. *Id.* § 1232g(a)(1)(A), (b)(1)(H). Otherwise, the requested information must be withheld from required public disclosure under sections 3(a)(14) and 14(e) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-21.

Yours very truly,

A handwritten signature in black ink that reads "Mary R. Crouter". The signature is written in a cursive style with a large, stylized "M" and "C".

Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lcd

Enclosures: Open Records Decision No. 431

Ref.: ID# 14342
ID# 14504

cc: Mr. John F. Guerra
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